

R3-09-001-8689-C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

JAN 28 2010

The Honorable John P. Murtha  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Murtha:

Thank you for your letter of November 18, 2009 to the U.S. Environmental Protection Agency (EPA) on behalf of your constituent, Mr. (b) (6) concerning EPA's recent actions regarding Arch Coal's Spruce No. 1 Surface Mine located in Logan County, West Virginia. Arch Coal is currently operating within a small portion of that mine site as a result of a court approved agreement between the company and environmental plaintiffs not to proceed beyond limited construction without further notification.

The Spruce No. 1 Mine is one of the largest mountaintop mining operations authorized in Appalachia and occurs in a watershed where many streams have been previously impacted by other mining operations. The project as authorized will impact 2,278 surface acres and place fill material into approximately 7.5 miles of streams. It is important to note that EPA has not rescinded the permit authorized by the Army Corps of Engineers (Corps) but has initiated a process to determine if the project will have unacceptable adverse effects on the aquatic environment and what outcome from the process, as described below, is most appropriate to address those effects.

EPA sent a letter on September 3, 2009 requesting that the District Engineer of the Corps' Huntington District consider using the discretionary authority provided to him by the regulations at 33 CFR 325.7 to either suspend, modify, or revoke the issued permit for the Spruce No. 1 Mine. This request was based on a culmination of existing and new scientific information indicating there are significant downstream water quality impacts to the aquatic ecosystem below valley fill operations similar to this one. EPA asserted that the impacts were not fully considered in the decision to authorize the project. On September 30, 2009, the District Engineer responded to that letter stating that he did not intend to utilize his discretionary authority to suspend, modify, or revoke the permit authorization. As a result, EPA initiated the Clean Water Act (CWA) Section 404(c) process by letter on October 16, 2009. Copies of EPA's letters may be found at [www.epa.gov/owow/wetlands/guidance/mining](http://www.epa.gov/owow/wetlands/guidance/mining).

Under the CWA Section 404(c), the EPA Administrator has the authority to prohibit use of a site for deposition of dredged or filled materials in waters of the United States or modify the nature of a project if it is determined that the project would result in unacceptable adverse environmental impacts. The decision to prohibit or restrict such activities must be based on a



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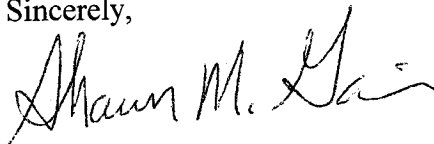
finding by the Administrator that such disposal would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's preference is to address environmental concerns effectively prior to permit issuance. The unique circumstances of this case give rise to the seriousness of EPA's action. Throughout the 10-year permitting process, EPA consistently expressed concerns regarding the magnitude and potential severity of the environmental impacts from the Spruce No. 1 Mine. These concerns were expressed in comments provided in response to the Public Notice in July 1999, again in response to the draft Environmental Impact Statement (EIS) in August 2002, followed by additional comments on the final EIS in October and November 2006.

EPA is continuing to work with the Corps and Mingo Logan Coal Company (Company), a subsidiary of Arch Coal, to evaluate new information and determine how best to proceed in accordance with the Clean Water Act and applicable regulations. EPA, the Company, and the Corps have had subsequent conversations and have agreed to continue to meet to discuss EPA's concerns.

Ultimately, EPA's process will result in one of three outcomes: (1) EPA could decide to use its discretion to prohibit any discharges from the project, including the construction of valley fills; (2) EPA could decide that the project cannot go forward under the permit as currently issued, but could go forward under a modified permit that would include more environmentally protective conditions; or (3) EPA could decide that the permit as currently issued is sufficiently protective.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Jessica Greathouse, EPA's West Virginia Liaison, at 304-234-0275.

Sincerely,



Shawn M. Garvin  
Regional Administrator

